

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0099

For

Violation of Cease and Desist Order Nos.  
R1-2003-0049, R1-2005-0087, and R1-2006-0109

In the Matter of  
City of Ferndale  
Wastewater Treatment Facility  
WDID No. 1B83136OHUM

Humboldt County

This Complaint assesses administrative civil liability for penalties pursuant to Water Code section 13385 and is issued to the City of Ferndale (hereinafter Discharger) for violations of Cease and Desist Order Nos. R1-2003-0049, R1-2005-0087, and R1-2006-0109. Discretionary penalties are being assessed for violations of Task deadlines that occurred during the period from July 1, 2003 through November 9, 2007.

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds the following:

1. The Discharger owns and operates the Ferndale Wastewater Treatment Facility (WWTF), located near Ferndale, California. The WWTF is adjacent to Francis Creek near its confluence with the Salt River, a tributary of the Eel River. The WWTF discharges secondary treated domestic wastewater to Francis Creek and consists of a gravity collection system, seven-acre aerated oxidation pond, settling basin, chlorine contact basin, dechlorination system and a treated wastewater aeration system. Design flow is 1.0 million gallons per day (mgd); average dry weather flow is approximately 0.32 mgd; and peak weather flows reach approximately 3.85 mgd.
2. The WWTF is regulated by Waste Discharge Requirements Order No. R1-2000-92 (WDRs), adopted by the Regional Water Board on November 29, 2000. These WDRs serve as a National Pollutant Discharge Elimination System (NPDES) Permit under the Federal Clean Water Act (NPDES No. CA0022721).
3. The Discharger's WDRs contain the following:
  - A. Discharge Prohibitions:
    2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050, of the California Water Code (CWC), is prohibited. [Health and Safety Code, Section 5411]

6. During the period of October 1 through May 14, discharges of wastewater shall not exceed one percent of the combined flows of Francis Creek and the Salt River. For purposes of this Permit, the combined flow shall be the flow of Francis Creek and Salt River measured at the confluence.
4. The Discharger has been violating Discharge Prohibitions contained in WDRs cited in Finding 3 above and the Water Quality Control Plan for the North Coast Region (Basin Plan) by discharging treated wastewater into Francis Creek at a rate higher than is permitted. The Regional Water Board adopted a Cease and Desist Order (CDO) with a time schedule for the Discharger to evaluate and choose an alternative to achieve compliance with WDRs and the Basin Plan. The sequence of the Regional Water Board's enforcement and the Discharger's noncompliance is as follows:
  - a. On May 15, 2003, the Regional Water Board adopted CDO No. R1-2003-0049 with a time schedule for the Discharger to evaluate alternatives by May 31, 2004. The Discharger submitted a Corrective Action Report on December 8, 2003, which together with the Addendum submitted on July 26, 2004, represented an alternatives analysis and satisfied Task A of the Order. The preferred project at that point was to upgrade the WWTF with a Sequencing Batch Reactor (SBR). Regional Water Board staff informed the Discharger that this alternative is acceptable. Because of Ferndale's citizen concerns about the high cost of this and the other six alternatives, the Ferndale City Council decided, in June 2005, to perform a second alternatives analysis to evaluate the options of wetland and Biolac<sup>TM</sup> treatment. The Discharger reviewed the option of wetland treatment, but because of high costs associated with land acquisition and wetlands mitigation chose a Biolac<sup>TM</sup> treatment system as the new preferred alternative on November 8, 2005. Regional Water Board staff informed the Discharger that this alternative also is acceptable.
  - b. The Regional Water Board amended the 2003 CDO by adopting CDO No. R1-2005-0087 on October 12, 2005. The amended Order contained a revised time schedule requiring a detailed analysis of the selected disposal alternative, a request for any appropriate Basin Plan exceptions, documentation of land acquisition, compliance with California Environmental Quality Act (CEQA), funding verification, submittal of treatment facility design, and construction deadlines. The amended CDO also provided an extension of the final compliance date from February 1, 2005 to October 1, 2008. The Discharger completed a short-term solution for depressed dissolved oxygen concentrations in the receiving waters and submitted a detailed analysis of the Biolac<sup>TM</sup> project including 10% design and a completed California Environmental Quality Act (CEQA) process. The Discharger failed to submit a Basin Plan variance request and failed to secure funding for the Biolac<sup>TM</sup> project.

- c. The Regional Water Board amended the time schedule contained in the 2005 CDO by adopting CDO No. R1-2006-0109 on November 29, 2006. This second amendment to the 2003 CDO reiterated the requirements for a Basin Plan variance request, extended all intermediate deadlines by approximately eight months, and extended the final project completion deadline from October 1, 2008 to November 1, 2009. Less than two months after the second amendment, the Discharger decided to stop pursuing the Biolac<sup>TM</sup> project and to re-evaluate the option of effluent disposal to the Eel River. The Discharger has failed to comply with Task A and B deadlines of the 2006 CDO by not submitting a Basin Plan variance request by July 1, 2007 and not submitting 50% design plans by October 1, 2007.

5. Violations of CDO R1-2003-0049

6. Task B required submission of progress reports by January 1 and July 1 of each year until the Discharger achieved full compliance with WDRs. The progress reports were to include: (1) a status of project milestones, (2) an evaluation of the effectiveness of any implemented measures, and (3) an assessment of any additional measures necessary to meet the time schedule. The Discharger did not submit four of the five required progress reports, which cover a period of 833 days from the first report due date of July 1, 2003 until the CDO was amended on October 12, 2005. The January 1, 2005 report was submitted on January 31, 2005.
7. Task C required full compliance with WDRs by February 1, 2005. The Discharger never achieved this deadline and was in violation, for 251 days, from February 2, 2005 until October 11, 2005. On October 12, 2005, the Regional Water Board extended the February 1, 2005 deadline to October 1, 2008.

8. Violations of CDO R1-2005-0087

9. Task F required the Discharger to secure funding for the long-term effluent disposal project by November 2, 2006. The Discharger never achieved this deadline and was in violation for 27 days, from November 2, 2006 until the Regional Water Board issued an extension (amended the 2003 CDO) on November 29, 2006.

10. Violations of CDO R1-2006-0109

11. Task A requires submission of a variance request to the 100:1 dilution Basin Plan requirement for surface water discharge by July 1, 2007. Task B requires submission of 50% design plans and specifications for construction of the proposed Biolac<sup>TM</sup> project by October 1, 2007. Task A and B remain incomplete and in violation - Task A for 132 days from July 1, 2007 to the date of this Complaint, and Task B for 38 days from October 1, 2007 to the date of this Complaint. The Discharger is threatening to miss the deadlines of Tasks C

through K due to its inability to choose and execute a long-term project.

12. Water Code section 13385, subdivision (a)(4) provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board may be up to \$10,000 for each day in which the violation occurs. The maximum potential penalty is \$9,920,000 for violations as follows: \$8,330,000 for 833 days violating the 2003 CDO, \$270,000 for 27 days violating the 2005 CDO, and \$1,320,000 for 132 days violating the 2006 CDO.
13. In determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. This section requires that at a minimum liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
14. The Discharger has been working on resolving noncompliance with WDRs since at least 1999. The Discharger has completed three alternative analyses and is currently working on a fourth analysis. The Discharger evaluated at least eight project alternatives and hired three different engineering firms. The Regional Water Board has amended the 2003 CDO time schedule twice to allow time for the Discharger to pursue different alternatives. Four and one-half years have passed and the Discharger still has not progressed toward implementation of a project to achieve compliance with WDRs and the Basin Plan, reportedly because the alternatives are too costly for the rate payers. Meanwhile, the WWTF continues to discharge into Francis Creek in violation of WDRs and the Basin Plan. It is not clear if the Discharger has realized an economic benefit to date because: 1) a preferred project has not been determined to date and 2) the Discharger has spent a significant amount of money on engineers and studies during the past four and one-half years. A penalty and deterrent is appropriate for the above-described delays that have been caused by the Discharger.
15. The issuance of this complaint is an enforcement action to protect the environment, and is therefore exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
16. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was

approved by the Office of Administrative Law and became effective on July 30, 2002.

THE CITY OF FERNDAL IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$125,000.
2. A hearing will be conducted on this complaint by the Regional Water Board on January 17, 2008 unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By signing the waiver form, the Discharger agrees to pay the total assessed penalty of \$125,000 to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint.
3. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the thirty-day public comment period on this Complaint ends. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
4. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.
5. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES Permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.
6. Notwithstanding the issuance of the Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violation of the Discharger's WDRs.

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Robert R. Klamt  
Interim Executive Officer

November 9, 2007